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No. 378

In the Supreme Court of the United States

OCTOBER TERM, 1962

ANDREW V. ALLESON, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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The petition presents the question whether the Veterans Administration, the Comptroller General and the Court of Claims properly ruled that a government employee who is called to active military duty and serves for a period in excess of one year is entitled, under 10 U.S.C. 371 (1952 ed.),[1] to double compensa-

[1] During the period at issue here, the statute provided:

"All officers and employees of the United States or of the District of Columbia who shall be members of the reserve components of the Armed Forces shall be entitled to leave of absence from their respective duties, without loss of pay, time, or efficiency rating, on all days during which they shall be ordered to active duty for training, or active duty, or to duty with troops or at field exercises, or for instruction, for periods not to exceed fifteen days in any one calendar year * * *."

The statute was initially enacted in 1917 (40 Stat. 72) in the above form except that it was limited to employees who

tion, *ie.*, civilian pay in addition to military compensation, for a single 15-day period rather than, as petitioner contends, for multiple periods of 15 days, one for each calendar year of service.

Petitioner, while employed as an attorney with the Veterans Administration, received orders to active duty as a member of the United States Naval Reserve. He was inducted on November 3, 1950, and served through October 5, 1954, when he returned to the Veterans Administration. Petitioner made claims to the Veterans Administration for payment for 15 days' military leave for each of the calendar years of his service, 1950 through 1954. The agency ruled that he was entitled to a single payment for 15 days' military leave for the full term of his service.[2] A protest to the agency was denied and petitioner submitted his claim to the Comptroller General who held (Pet. App. 22–25) that an employee may not be granted an excess of 15 days military leave of absence with pay for any one continuous period of service whether it extends beyond one or more calendar years. Peti-

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were members of the "Officers' Reserve Corps" "ordered to duty with troops or at field exercises, or for instruction * * *." It was amended in 1947 (61 Stat. 238) to extend its benefits to members of the "Enlisted Reserve Corps" and was again amended in 1952 (66 Stat. 506) to provide expressly for employees ordered to "active duty for training, or active duty."

[2] Petitioner claimed first for the years 1951 through 1954 and the Veterans Administration determined that he was entitled to payment for the years 1953 and 1954 (Pet. App. 16). Thereafter petitioner made an additional claim for the year 1950. In ruling on the claim, the Veterans Administration held that the payment for the years 1953 and 1954 had been erroneous and that petitioner was entitled to payment for a single 15-day period only (Pet. App. 17).

tioner then filed a claim in the Court of Claims which upheld the ruling of the Comptroller General (Pet. App. 15–21; 301 F. 2d 670).

The rulings of the Comptroller General and the Court of Claims are plainly correct. They accord with the consistent interpretation given the statute by the Comptroller General since 1930 and with the intent of Congress which has amended the statute three times (1947, 1952 and 1956) without changing the terms at issue here. There is no conflict of decisions. The question has no general importance and petitioner advances no other grounds warranting review by this Court.

Since 1917 Congress has provided dual compensation for certain government employees on all days during which they shall be ordered to military duty "for periods not to exceed fifteen days in any one calendar year * * *." The Comptroller General first interpreted the statute in 1930 (10 Comp. Gen. 116) to provide "a maximum of 15 days' military leave of absence with pay * * * for any one period of training duty if equal to or in excess of 15 days, regardless of length and whether in one or more calendar years * * *." Since that time, the Comptroller General has consistently adhered to this interpretation. 29 Comp. Gen. 269 (1949); 35 Comp. Gen. 708 (1956). In 1947 and 1952 the statute was amended (see footnote 1, *supra*) but the language limiting the period of dual compensation remained the same. Under the circumstances, petitioner is plainly in error in contending that the Comptroller General

has added restrictions not present in the statute in denying this claim and holding (Pet. App. 24–25):[3]

> As your period of military service extended from October 28, 1950 to October 5, 1954—one continuous period of less than four years—there is no authority in law for allowing more than one 15 day period of military leave for this service.

There is no merit to petitioner's contentions that Congress has evidenced a desire to alter this consistent interpretation of the statute.[4] In its description of the period of service for which dual compensation is allowed, the statute has remained the same from 1917 to date. Amendments to extend this relief to enlisted men and to employees called to active duty

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[3] The decisions of the Comptroller General cited and quoted by petitioner on pages 10 and 11 of his petition are not in conflict with the decision in the instant case or with the consistent construction of the statute. Thus, in 37 Comp. Gen. 313, 315 (1957), the Comptroller General held that an employee activated for the period from October 6, 1957 to April 5, 1958, was entitled to leave not to exceed 15 days, and that the administrative office might designate any one 15-day period during that tour of duty, not necessarily the first 15 days, as military leave, so long as the intent of the statute was otherwise observed. 37 Comp. Gen. 255 (1957) and 37 Comp. Gen 608 (1958) are similarly in accord with the Comptroller General's construction.

[4] The Act of 1956 (70A Stat. 632, 5 U.S.C. 30r), on which petitioner relies, did not become effective until after the service in issue here and has no bearing on the question presented. The Court of Claims properly so held (Pet. App. 18). In any event, the subsequent legislation left the operative words of the statute unchanged and shows no congressional intent to allow multiple claims for dual compensation for a single period of service. See § 49(a), 70A Stat. 640; S. Rep. No. 2484, 84th Cong., 2d Sess., pp. 19, 742 (1956).

afford no basis for petitioner's contention that Congress meant to increase beyond 15 days the period of dual compensation allowed for each call to service. In light of the established administrative construction of the statute, the Court of Claims was clearly warranted in holding that, had Congress intended to make such a change, it would have done so expressly. In absence of such action, the court properly gave effect to the interpretation of the statute consistently followed by the agencies charged with its administration. *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 139–140; *United States* v. *Bergh*, 352 U.S. 40, 46–47.

CONCLUSION

For these reasons the petition for a writ of certiorari should be denied.

Respectively submitted.

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